

## REMARKS

Claims 1-40 are pending in the above-referenced application. Claims 1-40 have been rejected. Specifically and in accordance with item numbering therein, the Office Action has:

In Items 7 and 8, rejected claims 1 and 21 over Rossides (U.S. Patent No. 5,749,785) in view of Lange (U.S. Patent No. 6,321,212);

In Item 9f, rejected claims 2 and 22, over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9g, rejected claims 3 and 23 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9h, rejected claims 4 and 24 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9i, rejected claims 5 and 25 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9j, rejected claims 6 and 26 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9k, rejected claims 7 and 27 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9l, rejected claims 8 and 28 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9m, rejected claims 9 and 29 over Lange;

In Item 9m(i), rejected claims 10 and 30 over Lange;

In Item 9m(ii), rejected claims 11 and 31 over Lange;

In Item 9m(iii), rejected claims 12 and 32 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9m(iv), rejected claims 13 and 33 over Lange, citing abstract, col. 1-5; col. 11-12;

In Item 9n, rejected claims 14 and 34 over Lange;

In Item 9n(v), rejected claims 15 and 35 over Lange;

In Item 9n(vi), rejected claims 16 and 36 over Lange;

In Item 9n(vii), rejected claims 17 and 37 over Lange;

In Item 9n(viii), rejected claims 18 and 38 over Lange;

In Item 9n(ix), rejected claims 19 and 39 over Lange;

In Item 9o, rejected claims 20 and 40 over Lange, citing abstract, col. 1-5; col. 11-12; and

In Item 10, argued that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified the betting/wagering system disclosed in Rossides with the application to commodities as disclosed in Lange, on the grounds that it would create another item for users to bet on.

### ROSSIDES REFERENCE

The Rossides reference describes a computer system that allows people to place, accept, and settle bets for the purpose of communicating. Rossides '785, Abstract. Rossides defines a bet as an

agreement entered into by two or more parties. The bet agreement includes four parts: (i) a bet statement, (ii) a probability statement called the payoff odds, (iii) the amounts of money (or other commodity that each party has at risk, and (iv) the sides of the bet that each party picks. Rossides '785, Col. 2, lines 37-54.

The Bet Statement is a statement that can be found true or false. Rossides, '785, Col. 2, line 45.

The Payoff Odds (the probability statement) tells the proportions of how much the person betting on True has to risk compared to how much the person betting on False has to risk. '785, Col. 2, lines 46-49.

The Amounts of Money or commodity at risk (The Stake) is the amount which the party that loses agrees to pay to the party that wins. '795, Col. 6, lines 47-55.

Rossides gives an example of a bet in Col. 7, lines 55-64. In that example, the bet statement is a proposition about the movement of the consumer price index, the payoff odds are stated as 3-1 (fractional odds, *i.e.*, odds against), or 25% (probability for), the side picked is the True side, and the stake is \$100. If the bet statement turns out to be true, the bettor receives \$300 plus his original stake, for a total of \$400. The payoff odds are the odds that determine the payout, not the actual odds of the event occurring. '785, Col. 7, lines 43-54. Payoff Odds do not necessarily bear any relationship with the actual odds of the bet statement occurring. See '785, Col. 14, lines 54-61, which shows the distinction.

#### **REJECTION OF CLAIMS 1 AND 21 OVER ROSSIDES IN VIEW OF LANGE**

The Office Action has proposed the combination of Rossides and Lange references. Applicant respectfully submits that a person of skill in the art would not have combined Lange with Rossides because: (i) the payoff systems of the two references are incompatible; (ii) the Lange reference teaches away from the Rossides reference; (iii) financial trading systems are patentably distinguishable from betting or wagering systems; and (iv) the Rossides art is not analogous to the Lange art.

#### **THE PAYOFF SYSTEMS OF THE TWO REFERENCES ARE INCOMPATIBLE**

The payoff system in Rossides, as mentioned above, depends on the Payoff Odds specified in the bet agreement. As explained in the reference, Payoff Odds are not actual probabilities that an event will or will not occur. Payoff Odds are a bettor's best estimate of the chances each side has of winning. Rossides, '785, Col. 3, lines 48-50. Furthermore, these estimates determine the bettor's return. If a bettor wagers \$100 and wins with 3:1 odds, he receives an additional \$300. Quite differently, the payoff system in Lange, also mentioned above, aggregates the amount invested for each state and reallocates returns to

investments in each state after the outcome of the observable event is known in order to compensate successful investments from losses on unsuccessful investments. Lange, Col. 8, lines 20-24, 34-35. It is clear that these two payoff systems are incompatible. In Rossides, the Payoff Odds determine the return that a bettor receives. In the zero-sum system of Lange, the pattern of investing in the various states determines the return that an investor receives. Also, in Lange the return is based on the outcome of an event of economic significance underlying the group of contingent claims pertaining to that event. In Rossides, the return is set by the Payoff Odds which are unrelated to the actual outcome of an economically significant event. Applicant submits that a person of skill in the art would not know how to reconcile these two systems because they are, in fact, mutually exclusive alternatives. Thus, a person of skill in the art would not have made such a combination.

#### **LANGE REFERENCE TEACHES AWAY FROM ROSSIDES REFERENCE**

Lange states that “the present invention differs from electronic or parimutuel betting systems disclosed in the prior art (*e.g.*, U.S. Patent No. 5,873,782 and 5,749,785). In betting systems or games of chance, in the absence of a wager the bettor is economically indifferent to the outcome...The difference between games of chance and events of economic significance is well known and understood in the financial markets.” Lange ‘785, Col. 10, lines 34-42. Given this statement in Lange, a person of skill in the art would not have looked to the Rossides reference for its teachings.

#### **FINANCIAL TRADING SYSTEMS ARE PATENTABLY DISTINGUISHABLE FROM BETTING OR WAGERING SYSTEMS**

Lange, an issued patent, is presumed valid.<sup>1</sup> This presumption means at least that the issued patent is patentably distinguishable over the references cited in the patent; otherwise, it should not have issued. One of the references cited is the Rossides reference. In fact, Lange provides the reason that financial trading systems are distinguishable over the betting system of Rossides. Lange specifically states that “[i]n betting systems or games of chance, in the absence of a wager the bettor is economically indifferent to the outcome...” Lange, Col. 10, lines 34-42. Therefore, a person of skill in the art would have been led to believe that financial trading systems are patentably distinguishable from betting systems and thus would not have looked to the teachings of Rossides when working in the field of financial trading systems.

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<sup>1</sup> 35 U.S.C. §282.

## THE TWO CLASSES OF ART ARE NOT ANALOGOUS

Non-analogous art is art from the same field of endeavor or art reasonably pertinent to the particular problems with which the inventor is involved.<sup>2</sup> The Rossides art is not from the same field of endeavor as the present invention and is not reasonably pertinent to the particular problems which the inventor of the present invention was faced with. The Rossides art is concerned with amusement devices, such as games, in which there is wagering or betting. The Lange art and the present invention are concerned with investing and trading financial products. These are very different fields of art.

Furthermore, Rossides is not pertinent to the problem that the present invention addresses. Rossides is concerned with betting or wagering as a form of communication between parties<sup>3</sup>. The present invention has no such concern. Instead, the present invention is directed to a system that allows small investors to participate the trading of commodity derivatives. Therefore, Rossides art is not analogous art to the present invention or to Lange.

In fact, when considering the patent office classifications for financial trading systems and for betting or gaming systems, one would reach the same conclusion. Lange is classified in 705/37<sup>4</sup> and the field of search for Lange includes art that is only in class 705. In contrast, the patent classification for the Rossides reference is 463<sup>5</sup> and the field of search did not include class 705. Yet, here, the Office Action ignores the distinction between the two fields of art and combines non-analogous class 463 art with 705 class art. Because the Rossides art is not analogous art, Applicant thus concludes that the Rossides art cannot be combined with the Lange art.

Furthermore, because the two fields of art are so far apart, the selection of Rossides appears to be a hindsight selection based on the Applicant's invention. The Federal Circuit has held that the combination of elements from nonanalogous sources, in a manner that attempts to reconstruct the applicant's invention with the benefit of hindsight, is insufficient to present a prima facie case of

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<sup>2</sup> In re GPAC Inc. 57 F.3d 1573, 35 USPQ2d 1116 at 1120 (Fed. Cir. 1995).

<sup>3</sup> Indeed, the Rossides reference makes a distinction between conventional markets whose purpose is transactions and the system described therein whose purpose is communication. Rossides, Col. 79, lines 31-32.

<sup>4</sup> Class 705 is DATA PROCESSING; FINANCIAL, BUSINESS PRACTICE, MANAGEMENT, OR COST/PRICE DETERMINATION. Subclass 37 is Trading, matching, or bidding in Subclass 35 Finance (e.g., banking, investment or credit)

<sup>5</sup> Class 463 is AMUSEMENT DEVICES: GAMES, subclass 25 is Credit/debit monitoring or manipulation (e.g., game entry, betting, prize level, etc.).

obviousness.<sup>6</sup> Therefore, the Rossides art cannot be selected to formulate a prima facie case of obviousness.

### **THE PROPOSED COMBINATION**

The proposed combination, according to statements in the Office Action, apparently includes the teachings of Rossides where the bet statement therein would refer to a commodity. Office Action, page 4, item 8. Therefore, the payoff system of the proposed combination is the payoff system of Rossides. Applicant submits that the proposed combination fails to teach or suggest at least the limitation “determining which one of the first and second investor is to receive the payoff based on the market value of the underlying commodity upon expiration of the contract in relation to one of a target price and a target price range,” as recited in claims 1 and 21. The payoff system of the present invention, as recited in claims 1 and 21, is based on the market value of the underlying commodity in relation to either the target price or the target price range upon expiration of the contract. The payoff system in Rossides is based on specified<sup>7</sup> Payoff Odds, which are unrelated to the value of any underlying commodity. Thus, the payoff system of Rossides is not the payoff system of the present invention and the cited limitation is not taught by Rossides. Furthermore, if the payoff system in the proposed combination were the payoff system of Lange, the proposed combination would still fail to meet the cited limitation, as explained in the previous office action response which is incorporated by reference. Therefore, the proposed combination fails to teach or suggest all of the limitations of the present invention, as recited in claims 1 and 21.

### **DEPENDENT CLAIMS**

Regarding item 9, which includes items 9f, 9g, 9i, 9l, 9m(iv), 9n, 9n(v-ix), in which claims 2, 22, 3, 23, 5, 25, 8, 28, 13, 33, 14-20, and 34-40 are rejected, Applicant submits that these claims are allowable at least because the independent claims from which they respectively depend are allowable. Additionally, as explained in the previous office action response, Lange does not disclose a method and system of administering an investment contract between at least two investors, as alleged on page 4 of the Office Action. Moreover, Lange fails to teach the limitations “wherein the payoff is selectively transferred to one of the first and second investor,” in claims 2

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<sup>6</sup> In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443, at 1446 (Fed. Cir. 1992)

<sup>7</sup> “When a user places a bet, it means that he makes a bet statement, sets the payoff odds, commits to picking a side, True or False, (though he may not specify which side), and puts a stake at risk.” Rossides, Col. 10, lines 10-13.

and 22, "wherein the payoff is calculated and transferred to one of the first and second investor," in claims 3 and 23, "wherein the fixed lump-sum payoff is transferred to one of the first and second investor," in claims 5 and 25, "wherein the fixed lump-sum payoff is transferred to one of the first and second investor," in claims 8 and 28, "wherein a payoff is calculated and transferred to one of the first and second investor," in claims 13 and 33, 14-20, and 34-40. Lange fails to teach these limitations because, in Lange, the payoff based on the distribution of investments among a plurality of states from a plurality of traders, as explained in the previous response. Lange, Col. 36, lines 42-46.

Regarding items 9h, 9j and 9k and 9m, 9m(i-iii), in which claims 4 and 24, 6 and 26, 7 and 27, 9-12, and 29-32 are rejected, Applicant submits that these claims are allowable at least because claims 3 and 23, 5 and 25, 8 and 28, from which they respectively depend, are allowable.

Having responded and rebutted each and every rejection made in the Office Action, Applicant respectfully submits that claims 1-40 are in condition for allowance, which is respectfully requested.


#### CONCLUSION

No fees beyond the RCE fee are believed to be due in connection with this Amendment. However, the Director is authorized to charge any additional fees that may required, or credit any overpayment, to Dechert LLP Deposit Account No. 50-2778 (**Order No. 367213-00101 (346359)**).

Respectfully submitted,

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